United Nations S/2003/1200

Security Council

Distr.: General
24 December 2003

Original: English

Letter dated 22 December 2003 from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council

I wish to draw your attention to the attached letter, which I sent to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities prepared following the latest report (S/2003/1070) of the Monitoring Group established pursuant to resolution 1363 (2001) (see annex).

In the light of the primary importance the Italian Government attaches to the matter, I would be extremely grateful if the present letter and its annex could be circulated as a document of the Security Council to ensure full, effective and transparent implementation of Security Council resolutions 1267 (1999), 1390 (2002) and 1455 (2003).

(*Signed*) Marcello **Spatafora**
Permanent Representative of Italy to the United Nations

03-67254 (E) 301203

Annex to the letter dated 22 December 2003 from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council

Letter dated 4 December 2003 from the Permanent Representative of Italy to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999)

Upon instructions from my Government, I enclose herewith an aide-memoire concerning the reactions of the competent Italian authorities to the report recently presented by the Monitoring Group established pursuant to Security Council resolution 1363 (2001), which is assisting the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities (see enclosure).

(*Signed*) Marcello **Spatafora**

Enclosure

Aide-memoire

- Youssef Nada and the Nasreddin Company have been the subject of a judicial inquiry, headed by Milan's Prosecutor's Office, that has had far-reaching internal and international reverberations. The investigations have dealt a serious blow to groups associated with international terrorist organizations and led to numerous arrests and other types of judicial actions.

- After Nada and the Nasreddin Company were included in the Taliban and Al-Qaida lists published by the Sanctions Committee, their financial assets were frozen in accordance with EC Regulation 881(2202).

- In a ruling of 26 June 2003, the Italian Committee for Financial Security rejected an appeal filed by Youssef Nada to lift the freeze on his assets on the grounds of SCR 1455 (humanitarian exceptions).

- Seizure of property is carried out independently by judicial authorities on the basis of a discretionary ruling on the relevance of such property to the commission of crimes under investigation.

- The inclusion of non-financial assets among those subject to seizure in the execution of internal measures — pursuant to Security Council resolution 1267 and subsequent resolutions — is still an open question in all the countries of the European Union. This became clear in discussions held by the FATF and more recently during the Seminar on the Financing of Terrorism in Brussels on 7 November 2003 organized by the Italian Presidency of the European Union and the European Commission.

- Nonetheless, to further attest to our country's commitment to addressing and resolving such problems, new ad hoc legislation is currently being drafted.

- Despite Nada's free access to his assets, and in lieu of measures for their seizure, profits derived from potential transactions using these assets are, in the final analysis, subject to seizure.

- With regard to the Monitoring Group's interest in properties located in Campione d'Italia, the competent Italian authorities have repeatedly expressed their willingness to receive a mission from the Monitoring Group in Italy and to provide the Group with all the information in their possession.

- Italy's cooperation with the Sanctions Committee established by SCR 1267 and with the Monitoring Group is tried and true, as recently confirmed by its invitation to Mr. Michel Chandler to participate in the meeting of the COTER Working Group in Brussels on 7 October 2003. At the meeting, issues of common interest were discussed and concrete proposals were made by the Italian Presidency of the European Union on behalf of COTER to forge a more effective partnership with the Sanctions Committee and the Monitoring Group. On that occasion, on the initiative of the Italian Presidency, Mr. Chandler met with the RELEX Working Group in its capacity as Sanctions Committee for the European Union.

- The 10 November presentation of the fourth proposal for the insertion of individuals and entities on the consolidated list approved by the Sanctions

Committee against the Taliban and Al-Qaida further demonstrates Italy's categorical commitment to implementing the relevant United Nations resolutions. It also confirms that our Government's general strategy against terrorism is a pillar of the European Union Presidency programme in this sector. The United Nations and its organs are the central element of international cooperation in the fight against terrorism.

- In Italy all of the Nada and Nasreddin companies indicated in the report are subject to a freezing of their assets and of all their business through financial and insurance intermediaries. The freeze thus covers not only bank accounts but also any financial or insurance activity (funds, deposits, policies, etc.).

- The interpretive note approved by FATF in Stockholm on 1-3 October 2003, regarding the special recommendations (freezing and confiscating terrorist assets) makes a clear distinction between freezing, seizing and confiscating. Freezing involves a ban on transferring, converting, deposing of or shifting funds and other assets, on the basis and for the duration of an action undertaken by a competent authority or by a court through a freezing mechanism. The frozen funds and assets are still the property of the persons or entities that have an interest in them at the time of the freezing, and they can continue to be managed by the financial institution or other system identified by such persons or entities before the beginning of the freeze. Italy has achieved the goal of freezing resources other than funds (i.e., preventing real estate and company property from being transformed into liquid funds that can easily be transferred to terrorists), since all receipts of a certain size deriving from the disposal or simple use of such properties has to be channelled through financial institutions and thus falls under existing measures to freeze capital.

- The Italian judicial authorities handling the Nada and Nasreddin case are awaiting information from the Swiss that is indispensable to supporting the adoption of seizure measures and later the confiscation of the properties at issue.

- The Swiss request to the Sanctions Committee to unfreeze some assets (a request that led to the Committee's learning of the existence of properties and businesses in Italy) was never forwarded to Italy, not even for the sake of information.

- As indicated above, the report refers to the inquiry conducted in Italy that discovered the contested elements. It does not mention, however, that Italy was never invited to collaborate with Monitoring Group activities by providing information and/or clarification.

Italy must thus reiterate its surprise at the observations contained in the "Business Entities, Shell Companies and Offshore Trusts" section of the Monitoring Group's report, addressed to a country, Italy, which has demonstrated its indisputable commitment to the fulfilment of the pertinent United Nations resolutions and of the counter-terrorism strategy that makes the United Nations the central element of international cooperation on this issue.

Pursuant to the current demarche, Italy expects that the Monitoring Group's report will reflect the real situation rather than the specious interpretations of the Monitoring Group.